

AN ACT

ENTITLED, An Act to make certain members of limited liability companies and partners of partnerships personally responsible for certain tax debts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 10-45-48.1 be amended to read as follows:

10-45-48.1. Any person who:

- (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed by this chapter is guilty of a Class 6 felony;
- (2) Fails to pay tax due under this chapter within sixty days from the date the tax becomes due is guilty of a Class 1 misdemeanor;
- (3) Fails to keep the records and books required by § 10-45-45 or refuses to exhibit these records to the secretary of revenue and regulation or the secretary's agents for the purpose of examination is guilty of a Class 1 misdemeanor;
- (4) Fails to file a return required by this chapter within sixty days from the date the return is due is guilty of a Class 1 misdemeanor;
- (5) Engages in business as a retailer under this chapter without obtaining a sales tax license is guilty of a Class 1 misdemeanor;
- (6) Engages in business as a retailer under this chapter after the person's sales tax license has been revoked by the secretary of revenue and regulation is guilty of a Class 6 felony;
- (7) Willfully violates any rule of the secretary of revenue and regulation for the administration and enforcement of the provisions of this chapter is guilty of a Class 1 misdemeanor;
- (8) Violates either subdivision (2) or subdivision (4) two or more times in any twelve-month period is guilty of a Class 6 felony; or

- (9) Engages in business as a retailer under this chapter without obtaining a sales tax license after having been notified in writing by the secretary of revenue and regulation that the person is a retailer subject to the provisions of the sales and use tax laws is guilty of a Class 6 felony. It is not a violation of this subdivision if the person engaging in business as a retailer files an application for a sales tax license and meets all lawful prerequisites for obtaining such license within three days from receipt of written notice from the secretary.

For purposes of this section, the term, person, includes corporate officers, member-managers or managers of limited liability companies, or partners that control, supervise, or are charged with the responsibility of filing tax returns or remitting tax payments pursuant to § 10-45-55.

Section 2. That § 10-45-55 be amended to read as follows:

10-45-55. If a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership subject to tax under this chapter fails for any reason to file the required returns or to pay the tax due, any of the corporate officers, member-managers or managers of limited liability companies, or partners of partnerships that control, supervise, or are charged with the responsibility of filing the returns or remitting tax payments shall be personally liable for the failure. The dissolution of a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership does not discharge an officer, member-manager, manager, or partner's liability for a prior failure of the corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership to file a return or remit the tax due. The sum due for such a liability may be assessed and collected as provided by law.

If the corporate officers, limited liability company member-managers or managers, or partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the

corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership shall provide the Department of Revenue and Regulation with a surety bond or certificate of deposit as security for payment of any tax that may become due. The bond or certificate of deposit provided for in this section shall be in an amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise tax rate. This section does not apply to elected or appointed officials of a municipality if bonded pursuant to §§ 9-14-6 and 9-14-6.1.

Section 3. That § 10-46-47.1 be amended to read as follows:

10-46-47.1. If a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership subject to tax under this chapter fails for any reason to file the required returns or to pay the tax due, any of the corporate officers, member-managers or managers of limited liability companies, or partners of partnerships that control, supervise, or are charged with the responsibility of filing the returns or remitting tax payments shall be personally liable for the failure. The dissolution of a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership does not discharge an officer, member-manager, manager, or partner's liability for a prior failure of the corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership to file a return or remit the tax due. The sum due for such a liability may be assessed and collected as provided by law.

If the corporate officers, limited liability company member-managers or managers, or partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership shall provide the Department of Revenue and Regulation with a surety bond or certificate of deposit as security for payment of any tax that may become due. The bond or certificate of deposit provided for in this section shall be in an amount equal to the estimated annual

gross receipts multiplied by the applicable sales or excise tax rate. This section does not apply to elected or appointed officials if bonded pursuant to §§ 9-14-6 and 9-14-6.1.

Section 4. That § 10-46A-13 be amended to read as follows:

10-46A-13. If a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership subject to tax under this chapter fails for any reason to file the required returns or to pay the tax due, any of the corporate officers, member-managers or managers of limited liability companies, or partners of partnerships that control, supervise, or are charged with the responsibility of filing the returns or remitting tax payments shall be personally liable for the failure. The dissolution of a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership does not discharge an officer, member-manager, manager, or partner's liability for a prior failure of the corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership to file a return or remit the tax due. The sum due for such a liability may be assessed and collected as provided by law.

If the corporate officers, limited liability company member-managers or managers, or partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership shall provide the Department of Revenue and Regulation with a surety bond or certificate of deposit as security for payment of any tax that may become due. The bond or certificate of deposit provided for in this section shall be in an amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise tax rate. This section does not apply to elected or appointed officials of a municipality if bonded pursuant to §§ 9-14-6 and 9-14-6.1.

Section 5. That § 10-46A-13.1 be amended to read as follows:

10-46A-13.1. Any person who:

- (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed by this chapter is guilty of a Class 6 felony;
- (2) Fails to pay tax due under this chapter within sixty days from the date the tax becomes due is guilty of a Class 1 misdemeanor;
- (3) Fails to keep the records and books required by § 10-45-45 or refuses to exhibit these records to the secretary of revenue and regulation or the secretary's agents for the purpose of examination is guilty of a Class 1 misdemeanor;
- (4) Fails to file a return required by this chapter within sixty days from the date the return is due is guilty of a Class 1 misdemeanor;
- (5) Engages in business under this chapter without obtaining a contractor's excise tax license is guilty of a Class 1 misdemeanor;
- (6) Engages in business under this chapter after the person's contractor's excise tax license has been revoked by the secretary of revenue and regulation is guilty of a Class 6 felony;
- (7) Violates either subdivision (2) or subdivision (4) of this section two or more times in any twelve-month period is guilty of a Class 6 felony; or
- (8) Engages in business under this chapter without obtaining a contractor's excise tax license after having been notified in writing by the secretary of revenue and regulation that the person is a contractor subject to the provisions of the contractors' excise tax laws is guilty of a Class 6 felony. It is not a violation of this subdivision if the person engaging in business files an application for a contractor's excise tax license and meets all lawful prerequisites for obtaining such license within three days from receipt of written notice from the secretary.

For purposes of this section, the term, person, includes corporate officers, member-managers or managers of limited liability companies, or partners that control, supervise, or are charged with the

responsibility of filing tax returns or remitting tax payments pursuant to § 10-46A-13.

Section 6. That § 10-46B-11 be amended to read as follows:

10-46B-11. If a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership subject to tax under this chapter fails for any reason to file the required returns or to pay the tax due, any of the corporate officers, member-managers or managers of limited liability companies, or partners of partnerships that control, supervise, or are charged with the responsibility of filing the returns or remitting tax payments shall be personally liable for the failure. The dissolution of a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership does not discharge an officer, member-manager, manager, or partner's liability for a prior failure of the corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership to file a return or remit the tax due. The sum due for such a liability may be assessed and collected as provided by law.

If the corporate officers, limited liability company member-managers or managers, or partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership shall provide the Department of Revenue and Regulation with a surety bond or certificate of deposit as security for payment of any tax that may become due. The bond or certificate of deposit provided for in this section shall be in an amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise tax rate. This section does not apply to elected or appointed officials of a municipality if bonded pursuant to §§ 9-14-6 and 9-14-6.1.

Section 7. That § 10-46B-11.1 be amended to read as follows:

10-46B-11.1. Any person who:

- (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed by

this chapter is guilty of a Class 6 felony;

- (2) Fails to pay tax due under this chapter within sixty days from the date the tax becomes due is guilty of a Class 1 misdemeanor;
- (3) Fails to keep the records and books required by § 10-45-45 or refuses to exhibit these records to the secretary of revenue and regulation or the secretary's agents for the purpose of examination is guilty of a Class 1 misdemeanor;
- (4) Fails to file a return required by this chapter within sixty days from the date the return is due is guilty of a Class 1 misdemeanor;
- (5) Engages in business under this chapter without obtaining a contractor's excise tax license is guilty of a Class 1 misdemeanor;
- (6) Engages in business under this chapter after the person's contractor's excise tax license has been revoked by the secretary of revenue and regulation is guilty of a Class 6 felony;
- (7) Violates either subdivision (2) or subdivision (4) two or more times in any twelve-month period is guilty of a Class 6 felony; or
- (8) Engages in business under this chapter without obtaining a contractor's excise tax license after having been notified in writing by the secretary of revenue and regulation that the person is a contractor subject to the provisions of the contractors' excise tax laws is guilty of a Class 6 felony. It is not a violation of this subdivision if the person engaging in business files an application for a contractor's excise tax license and meets all lawful prerequisites for obtaining such license within three days from receipt of written notice from the secretary.

For purposes of this section, the term, person, includes corporate officers, member-managers or managers of limited liability companies, or partners that control, supervise, or are charged with the responsibility of filing tax returns or remitting tax payments pursuant to § 10-46B-11.

Section 8. That § 10-47B-41 be amended to read as follows:

10-47B-41. A corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership subject to the taxes imposed by this chapter and its corporate officers, member-managers or managers of limited liability companies, or partners of partnerships are jointly and severally liable for the filing of reports or returns and the payment of tax, penalty, and interest due. The dissolution of a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership does not discharge an officer, member-manager, manager, or partner's liability for a prior failure of the corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership to file a return or remit the tax due. An officer, member-manager, manager, or partner subject to personal liability is not discharged from that liability upon vacating the office. An officer, member, or partner may be discharged from future liability upon notifying the secretary in writing. The sum due for such a liability may be assessed and collected as provided by law.

Section 9. That § 10-33A-17 be amended to read as follows:

10-33A-17. Any person who:

- (1) Makes any false or fraudulent return in attempting to defeat or evade the telecommunications gross receipts tax is guilty of a Class 6 felony;
- (2) Fails to pay the telecommunications gross receipts tax due under this chapter within sixty days from the date the tax becomes due is guilty of a Class 1 misdemeanor;
- (3) Fails to keep the records required by this chapter or refuses to exhibit these records to the department for the purpose of examination is guilty of a Class 1 misdemeanor;
- (4) Fails to file a return required by this chapter within sixty days from the date the return is due is guilty of a Class 1 misdemeanor;
- (5) Engages in business as a telecommunications company under this chapter without



obtaining a telecommunications gross receipts tax license is guilty of a Class 1 misdemeanor;

- (6) Engages in business as a telecommunications company under this chapter after the company's telecommunications gross receipts tax license has been revoked or canceled by the secretary is guilty of a Class 6 felony;
- (7) Willfully violates any rule of the secretary for the administration and enforcement of the provisions of this chapter is guilty of a Class 1 misdemeanor;
- (8) Violates either subdivision (2) or subdivision (4) of this section two or more times in any twelve-month period is guilty of a Class 6 felony; or
- (9) Engages in business as a telecommunications company under this chapter without obtaining a telecommunications gross receipts tax license after having been notified in writing by the secretary that the telecommunications company is subject to the provisions of this chapter is guilty of a Class 6 felony. However, it is not a violation of this subdivision if the telecommunications company providing any telecommunications service files an application for a telecommunications gross receipts tax license and meets all lawful prerequisites for obtaining such license within three days from receipt of written notice from the secretary.

For purposes of this section, the term, person, includes corporate officers, member-managers or managers of limited liability companies, or partners that control, supervise, or are charged with the responsibility of filing tax returns or remitting tax payments pursuant to this chapter.

Section 10. That § 10-33A-18 be amended to read as follows:

10-33A-18. If a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership subject to the gross receipts tax under this chapter fails for any reason to file the required returns or to pay the tax due, any of the corporate officers,

member-managers or managers of limited liability companies, or partners of partnerships that control, supervise, or are charged with the responsibility of filing the returns or remitting tax payments are personally liable for the failure. The dissolution of a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership does not discharge an officer, member-manager, manager, or partner's liability for a prior failure of the corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership to file a return or remit the tax due. The sum due for such a liability may be assessed and collected as provided by law.

If the responsible corporate officers, limited liability company member-managers, managers, or partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership shall provide the department with a surety bond or certificate of deposit as security for payment of any tax that may become due. The bond or certificate of deposit provided for in this section shall be in an amount equal to the estimated annual gross receipts multiplied by the applicable sales or gross receipts tax rate. This section does not apply to elected or appointed officials of a municipality if bonded pursuant to §§ 9-14-6 and 9-14-6.1.

An Act to make certain members of limited liability companies and partners of partnerships personally responsible for certain tax debts.

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I certify that the attached Act  
originated in the

HOUSE as Bill No. 1022

\_\_\_\_\_  
Chief Clerk

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\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

House Bill No. 1022

File No. \_\_\_\_\_

Chapter No. \_\_\_\_\_

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Received at this Executive Office  
this \_\_\_\_\_ day of \_\_\_\_\_ ,

20\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor

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The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 20\_\_\_\_

\_\_\_\_\_  
Governor

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STATE OF SOUTH DAKOTA,  
ss.

Office of the Secretary of State

Filed \_\_\_\_\_, 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State